



Paper No. 8

ENERGY CONVERSION DEVICES, INC.  
2956 WATERVIEW DRIVE  
ROCHESTER HILLS MI 48309

**COPY MAILED**

**JUN 17 2004**

**OFFICE OF PETITIONS**

In re Application of	:
Stanford R. Ovshinsky	:
Application No. 10/043,010	:
Filed: January 11, 2002	:
Attorney Docket No. A0119US	:
	: DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed January 20, 2004, to revive the above-identified application. Initially, the petition is being treated as a petition under 37 CFR 1.181, to withdraw the holding of abandonment.

This application became abandoned for failure to properly and timely reply to the Notice to File Missing Parts of Nonprovisional Application mailed February 12, 2002, which set a two-month shortened statutory period to respond. This application became abandoned on April 13, 2002. A Notice of Abandonment was mailed on January 14, 2004.

*As to the petition under 37 CFR 1.181:*

Petitioner states that he filed a timely response to the Notice to File Missing Parts. In support of the petition, petitioner submits a copy of a postcard receipt date-stamped May 10, 2002, acknowledging receipt of the following: "Received by PTO: Response to Notice to File Missing Parts, a signed Declaration and Power of Attorney, Assignment, Recordation Form Cover Sheet, Formalities Letter and Request for Extension of Time under 37 CFR 1.136(a)." Petitioner included copies of these documents with the present petition.

M.P.E.P. § 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as

*prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

The Office notes that if the one-month extension of time was processed, the response would have been timely received.<sup>1</sup> However, even if the Office would have considered the reply timely, it is not a proper response to the Notice because the declaration is defective for the reasons stated below. Accordingly, the petition under 37 CFR 1.181 is **dismissed**.

*As to the petition under 37 CFR 1.137(b):*

The provisions of 37 CFR 1.137(b) provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee;

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

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<sup>1</sup>The Office did not charge Petitioner's Deposit Account for the one-month extension of time to reply.

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The present petition does not satisfy requirement (1) above.

Petitioner failed to submit an oath or declaration for the patent application in compliance with 37 CFR 1.63. The declaration does not identify the inventor's country of citizenship. The Office notes that the oath or declaration must identify the country of citizenship, as well as "[t]he mailing address, and the residence if an inventor lives at a location which is different from where the inventor customarily receives mail, of each inventor. . . ." 37 CFR 1.63(c)(1). Accordingly, the petition under 37 CFR 1.137(b) is **dismissed**.

Petitioner must submit an oath or declaration in compliance with 37 CFR 1.63 with any renewed petition under 37 CFR 1.137(b).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

Further correspondence with respect to this matter should be addressed as follows and to the **Attention of Senior Petitions Attorney Christina Tartera Donnell**:

By mail:           Mail Stop Petition  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria, VA 22313-1450

By FAX:           (703) 872-9306  
                  Attn: Office of Petitions

By hand:          U.S. Patent and Trademark Office  
                  220 20<sup>th</sup> Street S.  
                  Customer Window, Mail Stop Petition  
                  Crystal Plaza Two, Lobby, Room 1B03  
                  Arlington, VA 22202

Petitioner's Deposit Account No. 05-1068 will be charged \$1,330.00, the fee for the petition under 37 CFR 1.137(b). Petitioner's Deposit Account No. 05-1068 will be credited the \$110.00 petition fee, which was incorrectly charged.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

*Christina Tartera Donnell*

Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions